

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9694 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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HARESH NATUBHAI PATEL

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ANIL S DAVE for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 2nd November, 1998 made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger; within the meaning of Section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of public order. An offence punishable under the Bombay Prohibition Act has been registered against the petitioner on 5th October, 1998, which is pending investigation. Besides, the police has also recorded statements of two witnesses made in respect of the nefarious activities of the petitioner and its adverse effect on the public health and the even tempo of life.

4. It is submitted that the impugned order has been made long after the registration of the offence against the petitioner. The delay in making the order has not been satisfactorily explained and in absence of such explanation, the said delay must be held to be fatal to the impugned order. Besides, the detaining authority has wrongly withheld the names and the other particulars of the witnesses. In absence of such particulars, the petitioner has been deprived of his right to make an effective representation against the impugned order. It is contended that the offence was registered on 5th August, 1998 and the petitioner was released on 20th August, 1998. On 31st October, 1998 and 1st November, 1998, the statements of witnesses were recorded and were verified on 2nd November, 1998. On the same date, the impugned order was made.

5. It is thus clear that the impugned order was made long after the registration of the offence against the petitioner. Even the statements of the witnesses were recorded after the petitioner was released on bail. The detaining authority has tried to explain the said delay by saying that after the registration of offence, some material was required to be gathered. However, the nature of material gathered or the time spent for the same has not been stated in the affidavit. In absence of specific averments made in the affidavit, it must be held that the delay has not been satisfactorily explained. The delay in question would suggest that the petitioner's activities were not believed to be prejudicial to the maintenance of public order. The continued detention of the petitioner is, therefore, not warranted.

6. For the aforesaid reasons, the petition is allowed. The impugned order dated 2nd November, 1998; Annexure-A to the petition, is quashed and set-aside.

Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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Prakash\*